

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VANESSA SIMMONDS,  
  
Plaintiff,  
  
and  
  
GEEKNET, INC. (f/k/a VA LINUX  
SYSTEMS, INC.), a Delaware corporation,  
  
Nominal Plaintiff,  
  
v.  
  
CREDIT SUISSE SECURITIES (USA) LLC,  
a Delaware limited liability company,  
  
Defendant.

Case No. 2:12-cv-01937 JLR

**DEFENDANT'S RESPONSE TO  
PLAINTIFF'S NOTICE OF  
SUPPLEMENTAL AUTHORITY**

Defendant Credit Suisse Securities (USA) LLC (“Credit Suisse”) responds to Plaintiff’s Notice of Supplemental Authority filed on March 20, 2013 [Dkt. No. 38]. Respectfully, Plaintiff’s submission is plainly improper and provides no support for her Complaint, and accordingly it should be stricken.

Local Civil Rule 7(n) provides that “[b]efore the court rules on a pending motion, a party may bring to the court’s attention *relevant authority* issued after the date the party’s last brief was filed by serving and filing a Notice of Supplemental Authority that attaches the supplemental authority without argument.” W.D. Wash. L.C.R. 7(n) (emphasis added).

Plaintiff’s submission—a recent *New York Times* op-ed column and certain accompanying

DEFENDANT'S RESPONSE TO PLAINTIFF'S NOTICE OF  
SUPPLEMENTAL AUTHORITY - 1

Case No. 2:2-cv-01937 JLR

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documents concerning the 1999 IPO of a company called eToys—is neither relevant nor authority. The term “authority” refers to legal authorities such as cases and statutes, not op-ed pieces.<sup>1</sup> More importantly, Plaintiff’s submissions—like several other public record sources she has cited during this litigation—are irrelevant to this lawsuit. The op-ed focuses on allegedly improper practices by Goldman Sachs in connection with the IPO of a different company. The op-ed contains no mention of the VA Linux IPO or any of the members of the supposed “group” in this action—Credit Suisse, Lehman Brothers, Wilson Sonsini, and Sequoia Capital. *See* Dkt. No. 38. Likewise, none of the documents even mention the VA Linux IPO or suggest that improper practices occurred in connection with that IPO. Plaintiff’s submission should accordingly be stricken.

Separately, far from supporting her claim, Plaintiff’s invocation of the eToys litigation only reinforces that this action is time-barred. The eToys lawsuit was filed in 2002. *See EBC I, Inc. v. Goldman Sachs & Co.*, 2003 WL 25515373 (N.Y. Sup. Ct. 2003). Much like Plaintiff here, the eToys plaintiffs sought to pursue claims on behalf of the issuer, alleging underwriter misconduct in connection with the IPO: specifically, that the eToys IPO was underpriced and featured kickback arrangements. *Compare EBC I, Inc. v. Goldman Sachs & Co.*, 832 N.E.2d 26, 33, 35 (N.Y. 2005) (noting allegations that “Goldman Sachs engaged in intentional misconduct by underpricing [the] shares” of eToys in the IPO and made “money on kickbacks from . . . secret side deals”) *with* Compl. ¶¶ 4.4, 4.8 (alleging that the group sought to “maximize the spread between VA Linux’s IPO and aftermarket share prices” and engaged in “kickback” arrangements).<sup>2</sup> Thus, the eToys litigation highlights that Plaintiff should have asserted her IPO underpricing and other related claims over a decade ago and that those claims

<sup>1</sup> For example, Black’s Law defines the term “authority” to include, as relevant here, (1) “A legal writing taken as definitive or decisive; esp., a judicial or administrative decision cited as a precedent” including “not only the decisions of tribunals but also statutes, ordinances, and administrative rulings”; and (2) “A source, such as a statute, case, or treatise, cited in support of a legal argument . . .” Black’s Law Dictionary (9th ed. 2009).

<sup>2</sup> As previously noted, similar allegations were also made in the *IPO Litigation* in the Southern District of New York in 2001 with respect to numerous IPOs, including the VA Linux IPO. *See* Mot. to Dismiss [Dkt. 31] at 5-7, 19-20.

1 are long since time-barred.

2 DATED: March 22, 2013

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25 DEFENDANT'S RESPONSE TO PLAINTIFF'S NOTICE OF  
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**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington and the United States, that on the 22nd day of March, 2013, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

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